

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION**

FILED
FEB 15 2008
DAVID CREWS, CLERK
By [Signature] Deputy

DAVID SCOGGINS

PLAINTIFF

v.

CIVIL ACTION NO. 2:08CV032-P-A

BOSTON SCIENTIFIC CORPORATION

DEFENDANT

**NOTICE OF REMOVAL OF ACTION
PURSUANT TO 28 U.S.C. § 1331**

PLEASE TAKE NOTICE that this Notice of Removal and exhibit attached hereto have been filed this day in the United States District Court for the Northern District of Mississippi, for and on behalf of the Defendant, Boston Scientific Corporation. You are hereby served a copy of this Notice of Removal of said cause to the United States District Court for the Northern District of Mississippi, and you will be mindful of the provisions of the 28 U.S.C. § 1441, *et seq.* Please take notice hereof and govern yourselves accordingly. As its short and plain statement of the grounds of removal of this civil action, the Defendant would show unto the Court the following, to wit:

I.

Defendant, Boston Scientific Corporation, pursuant to 28 U.S.C. § 1446, hereby notices removal of this civil action to the United States District Court for the Northern District of Mississippi. This case was originally filed by the Plaintiff in the Circuit Court of DeSoto County, Mississippi, a certain civil action styled "DAVID SCOGGINS V. BOSTON SCIENTIFIC CORPORATION" being Cause No. CV2007-0148 on the docket of said Court.

II.

The basis of removal is the existence of diversity of citizenship pursuant to 28 U.S.C. § 1332(a)(1). The Plaintiff alleges in the Complaint that Defendant was negligent in manufacture, construction, assembly and inspection of the endostat device. Plaintiff further alleges that the Defendant is a foreign corporation doing business in the State of Mississippi. Plaintiff states that his alleged damages are \$2,000,000.00.

III.

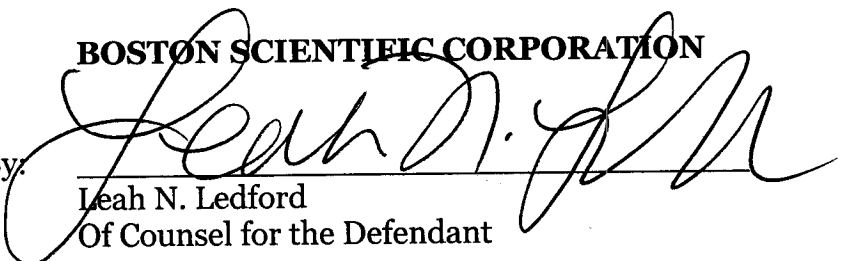
The attached certified record of the DeSoto County Circuit Court is provided pursuant to 28 U.S.C. § 1446(a). See Attached Exhibit "A."

IV.

The Defendant, upon filing of this Notice of Removal, has given Notice to the Plaintiff through his attorney of record, and simultaneous, therewith, this Defendant has filed a true and correct copy of the Notice of Removal with the Clerk of the Circuit Court of DeSoto County, Mississippi, in compliance with 28 U.S.C. § 1446(d).

WHEREFORE, PREMISES CONSIDERED, the Defendant, Boston Scientific Corporation, prays that this Court will proceed with the handling of this case as if it has been originally filed herein, and that further proceedings in the Circuit Court of DeSoto County, Mississippi, be hereby stayed.

Respectfully submitted, this the 13th day of February, 2008.

BOSTON SCIENTIFIC CORPORATION
By: 
Leah N. Ledford
Of Counsel for the Defendant

OF COUNSEL:

SCOTT, SULLIVAN, STREETMAN & FOX, P.C.

JAMES P. STREETMAN, III

(MS BAR NO. 7973)

LEAH N. LEDFORD

(MS BAR NO. 101394)

P.O. Box 13847

Jackson, MS 39236-3847

Telephone: (601) 607-4800

Facsimile: (601) 607-4802

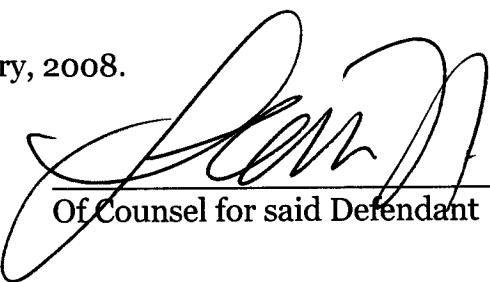
CERTIFICATE OF SERVICE

I, the undersigned counsel of record for Defendant, do hereby certify that I have this date caused to be delivered, **via United States Mail, postage prepaid**, a true and correct copy of the above and foregoing document to the following:

John Michael Bailey, Esq.
210 E. Main Street
Suite D
Tupelo, MS 38804

Dale K. Thompson
Circuit Court Clerk
2535 Highway 51 South
Room 201
Hernando, MS 38632

This the 13th day of February, 2008.



Of Counsel for said Defendant

IN THE CIRCUIT COURT OF DESOTO COUNTY, MISSISSIPPI
FOR THE SEVENTEENTH JUDICIAL DISTRICT AT HERNANDO

DAVID SCOGGINS,

Plaintiff,

NO. CV2007-0148CD
JURY DEMANDED

vs.

UNKNOWN MANUFACTURER OF CAUTERY MACHINE,

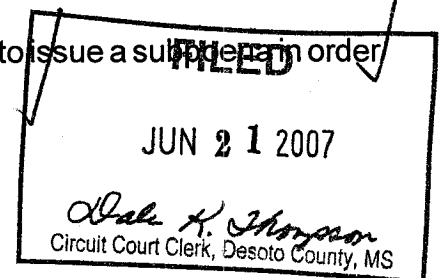
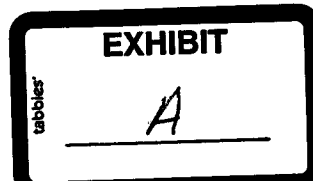
Defendant,

COMPLAINT

COMES NOW the Plaintiff, DAVID SCOGGINS by and through the undersigned attorneys and hereby files this complaint against the Defendant, UNKNOWN MANUFACTURER OF CAUTERY MACHINE, making the following allegations, to wit:

PARTIES

1. That the Plaintiff an adult resident of Memphis, Shelby County, Tennessee.
2. That the Defendant, Unknown Manufacturer of Cautery Machine, is a for-profit manufacturing entity providing medical equipment, to include Cautery machines, to the Baptist Memorial Hospital-DeSoto, and is either a sole proprietorship, a partnership, or a domestic corporation duly incorporated under the laws of this state or a foreign corporation and is authorized to do business within this state. Plaintiff requires additional information to effect service of process as the identity of the Defendant as well as any agent for the service of process is unknown to the Plaintiff as this time. Plaintiff intends to issue a subpoena order to obtain the information necessary to serve this Complaint.



3. That the Plaintiff's cause of action arises in tort as a result of injuries he sustained when, as a patient undergoing a routine Colonoscopy at Baptist Memorial Hospital-DeSoto, the cauterizing machine malfunctioned, tearing a hole in the colon and abdominal wall of the Plaintiff, known as an intestinal perforation, causing extreme pain as well as grievous and permanent injury.

FACTS

4. That on or about June 22, 2004, Plaintiff, David Scoggins, checked in to Baptist Memorial Hospital DeSoto for a scheduled medical procedure known as a Colonoscopy to have polyps removed from the surface of the colon.

5. That Plaintiff, David Scoggins, was prepared for surgery, and in the course of this preparation, he was placed on surgical table and was rendered unconscious by general anesthesia.

6. During the procedure, the attending surgeon was using a cauterizing machine to "burn" polyps from the surface of the Plaintiff's colon.

7. The attending surgeon, according to written medical narratives, asked the nurse to adjust this machine, at which time, the machine created a jolt of electricity, comparable to a lightning strike, into the colon of Mr. Scoggins.

8. The electric shock burned a hole into Mr. Scoggins colon, causing him to suffer a respiratory arrest and failure, erratic heart rates and an extended stay under intensive care on a ventilator for breathing support, and a feeding tube inserted into his stomach.

9. The Plaintiff was required, as part of efforts to save his life, to undergo an additional surgical procedure to repair the perforated colon, leaving the Plaintiff with a scar

from his chest to his waist.

10. The Plaintiff has also been left with a cognitive deficit, including memory loss, from which he may never fully recover.

11. That Plaintiff, David Scoggins, was a patient under the care of Baptist Memorial Hospital-DeSoto.

12. That Plaintiff entrusted his health, well being, and his very life, to Baptist Memorial Hospital-DeSoto.

13. The unknown manufacturer was under a duty to take every precaution to ensure that cautery machines being sold/supplied by it are properly designed, manufactured, constructed, assembled, inspected and safe for the intended use.

14. That Plaintiff was in a state of unconsciousness and not in a position to determine the safety of the surgical equipment to be used upon him. That Plaintiff nor any reasonable person not educated in the field of medicine or medical equipment could have known, by sight alone, that the cautery machine had an electrical malfunction.

15. That the negligence of Defendant, Unknown Manufacturer of Cautery Machine is the proximate cause of the injuries and damages sustained by the Plaintiff in this action, which shall be set forth hereinafter with more particularity.

NEGLIGENCE

16. The Plaintiff hereby realleges the previous paragraphs and incorporates them by reference.

17. The Defendant, Unknown Manufacturer, participated in the manufacture, sale, and maintenance of the cautery machine.

18. At all times mentioned in this Complaint, Defendant so negligently and carelessly designed, manufactured, constructed, assembled, inspected, and sold the Cautery Machine to the Baptist Memorial Hospital-DeSoto, even though it was dangerous and unsafe for its intended uses.

19. This design defect made the product unreasonably dangerous.

20. Further, Defendant negligently maintained the said cautery machine, or negligently trained other personnel of Baptist Memorial Hospital-DeSoto, in the maintenance and care of the said cautery machine.

21. The cautery machine as manufactured and assembled by Defendant remained unchanged and was in the same condition at the time of the injury hereafter alleged.

22. Defendant knew or should have known when manufacturing and maintaining this electrical system that it was designed defectively or maintained, creating a unreasonable risk of injury for to Plaintiff.

23. That the negligence of Defendant, Unknown Manufacturer of Cautery Machine, is the proximate cause of the Plaintiff's injuries.

INJURIES AND DAMAGE

24. The Plaintiff hereby realleges the previous paragraphs and incorporates them by reference.

25. Plaintiff charges and alleges that as a direct and proximate result of the use of defendant's defective product, he suffered severe and permanent personal injuries, including but not limited to:

Great physical pain, past and future

Great mental and emotional suffering

Fear for his life

Loss of enjoyment of life, past and future

Loss of earnings, past and future

Fear and anxiety regarding future surgery/medical treatments

Doctor and medical bills

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays:

1. That proper process issue against this Defendant and that Defendant be required to answer this Complaint.
2. That Plaintiff, David Scoggins, be awarded a judgment against the Defendant, in an amount not to exceed **\$2,000,000.00 (TWO MILLION DOLLARS)**, in actual, compensatory and punitive damages.
3. That the cost of this action be awarded to the Plaintiff.
4. That Plaintiff demands a Jury to try these issues when joined.
5. Plaintiff reserves the right to amend these pleadings to conform to the facts of this matter.

Respectfully Submitted,

**Law Offices of
John Michael Bailey, P.C.**

A handwritten signature in cursive script, reading "Nichon Shannon". The signature is written in black ink and is positioned above a horizontal line.

Nichon Shannon MS101120
John Michael Bailey MS101076
Attorneys for Plaintiff
5978 Knight Arnold Road, Ste. 400
Memphis, Tennessee 38115
(901) 529-1010
(901) 529-1017 Fax

SUBPOENA DUCES TECUM

Circuit Court

DeSoto County, Mississippi

DAVID SCOGGINS,

Plaintiff,

vs.

UNKNOWN MANUFACTURER
CAUTERY MACHINE,

Defendant.

Cause No.

CV2007-0148CD

Issued ~~_____ day of _____~~, 2007.

To the Sheriff of DeSoto County, MS

Greetings:

You are hereby commanded to summon:

Head of Department of Surgery
Baptist Memorial Hospital DeSoto
7601 Southcrest Parkway
Southaven, MS. 38671

PRIVATE PROCESS SERVICE

Federated P. I., LLC
Huston S. Akins
901-324-1826

TO APPEAR AND BRING WITH YOU (OR MAIL): (1) Name of the cautery machine, manufacturer name, serial number on the cautery machine and other identifying information with regard to the cautery machine used on David Scoggins on or about June 22, 2004 during the performing of a colonoscopy. (2) Any and all instructions, manuals, pamphlets, memorandums, documents, recall reports, maintenance logs, pictures, diagrams, charts, medical journal articles, text books, newspaper articles and/or updates pertinent to the assembly, usage, precautions and maintenance of any cautery machine in use at Baptist Memorial Hospital DeSoto on or about June 22, 2004. Personally to be and appear on Monday, the 30th day of July, 2007 at 5:00 P.M., at the Law Offices of John Michael Bailey, 5978 Knight Arnold Rd., Memphis, TN 38115, then and there to testify and give evidence on behalf of the Plaintiff, in the case of Scoggins v. Unknown Manufacturer Cautery Machine.

This you will in no wise omit, under the penalty prescribed by law.

Herein fail not, and have you then and there this writ.

*****CUSTODIAN, PLEASE NOTE:** In lieu of your personal appearance, you may mail a copy of the requested records to John Michael Bailey, Attorney, 5978 Knight Arnold Rd., Memphis, Tennessee 38115, to be received no later than the date indicated above.

TESTED and ISSUED

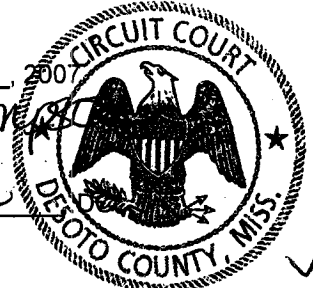
21

day of

June
Dale K. Thomas
Clerk of Circuit

By:

C. G. G. G.



Came to hand and executed as commanded on _____

This _____ day of _____, 2007.

DeSoto County Sheriff

By: _____, DS

Attorney: Nichon Shannon (101120)

Address: 5978 Knight Arnold, Memphis, TN 38115

Telephone: 901-529-1010

PRIVATE PROCESS SERVER

I HEREBY CERTIFY THAT I HAVE SERVED THE WITHIN SUMMONS:

By delivering on the ____ day of _____, 20 ____ at _____ M. a copy of the summons and a copy of the Complaint to the following defendants _____

(PLEASE PRINT THE FOLLOWING)

Private Process Server

Address

Phone

Company

Signature

FEE BILL, CIVIL CASES, CIRCUIT COURT

State of Mississippi
Desoto County

DAVID SCROGGINS VS UNKNOWN MANUFACTURER OF CAUTERY MACHINE

Case # CV2007-0148 Acct # Paid By CHECK 1612 Receipt# 24173

CLERK'S FEE	75.00
JURY TAX	3.00
COURT REPORTER FEE	10.00
LAW LIBRARY	2.50
ST COURT EDUCATION	2.00
CONSTITUENT FEE	.50
COURT ADMIN FEE	2.00
LEGAL ASSISTANCE	5.00
ELECTRONIC FILING	10.00

=====
Total \$110.00

Payment received from Nichon Shannon

Transaction 40807 Received 6/21/2007 at 11:43 Drawer 2 I.D. CML

Account Balance Due 0.00 Receipt Amount \$110.00

By  D.C. Dale K. Thompson, Circuit Clerk

Case # CV2007-0148 Acct # Paid By CHECK 1612 Receipt# 24173

✓

COVER SHEET**Civil Case Filing Form**(To be completed by Attorney/Party
Prior to Filing of Pleading)Mississippi Supreme Court
Administrative Office of CourtsForm AOC/01
(Revised 5/11/2000)Court Identification
Docket Number

Case Year

Docket Number

County # Judicial District Court ID (CH, CI, CO)

Month Date Year

This area to be completed by Clerk

Local Docket ID

Case Number If filed prior to 1/1/94

In the Circuit Court of Desoto County

Short Style of Case: Scoggins vs. Unknown manufacturer of Cautery Machine

Party Filing Initial Pleading: Type Plaintiff Name Nichon Shannon MS Bar No. 101120

Check (✓) if Not an Attorney _____ Check (✓) if Pro Hac Vice Signature _____

Compensatory Damages Sought: _____ Punitive Damages Sought: _____

Is Child Support contemplated as an issue in this suit? Yes _____ No ✓ If "yes" is checked, please submit a completed Child Support Information Sheet with Final Decree/Judgment

PLAINTIFF - PARTY(IES) INITIALLY BRINGING SUIT SHOULD BE ENTERED FIRST (FIRST NAME IN SHORT STYLE) - ENTER ADDITIONAL PLAINTIFFS ON SEPARATE FORM

Individual Scoggins David Last Name First Name Maiden Name, if Applicable Middle Init. Jr/Sr/III/IV

Address of Plaintiff 2449 Meadowbrook Rd. Memphis, TN 38109

Check (✓) if Individual Plaintiff is acting in capacity as Executor(trix) or Administrator(trix) of an Estate, and enter style: _____

Estate of _____

Check (✓) if Individual Plaintiff is acting in capacity as Business Owner/Operator (d/b/a) or State Agency, and enter entity: _____

D/B/A / Agency _____

Business _____

Enter legal name of business, corporation, partnership, agency - If Corporation, indicate state where incorporated _____

Check (✓) if Business Plaintiff is filing suit in the name of an entity other than the above, and enter below: _____

D/B/A: _____

DEFENDANT NAME OF DEFENDANT (FIRST NAME IN SHORT STYLE) - ENTER ADDITIONAL DEFENDANTS ON SEPARATE FORM

Individual Unknown manufacturer of Cautery Machine Last Name First Name Maiden Name, if Applicable Middle Init. Jr/Sr/III/IV

Check (✓) if Individual Defendant is acting in capacity as Executor(trix) or Administrator(trix) of an Estate, and enter style: _____

Estate of _____

Check (✓) if Individual Defendant is acting in capacity as Business Owner/Operator (d/b/a) or State Agency, and enter entity: _____

D/B/A / Agency _____

Business _____

Enter legal name of business, corporation, partnership, agency - If Corporation, indicate state where incorporated _____

Check (✓) if Business Defendant is filing suit in the name of an entity other than the above, and enter below: _____

D/B/A: _____

ATTORNEY FOR THIS DEFENDANT: _____ Bar No. Or Name: _____ Pro Hac Vice (✓) _____

In left hand column, check one (1) box that best describes the nature of this suit. In right hand column check all boxes which indicate secondary claims.

Business/Commercial

- ☐ Accounting (Business)
- ☐ Bankruptcy
- ☐ Business Dissolution - Corporation
- ☐ Business Dissolution - Partnership
- ☐ Debt Collection
- ☐ Employment
- ☐ Examination of Debtor
- ☐ Execution
- ☐ Foreign Judgment
- ☐ Garnishment
- ☐ Pension
- ☐ Receivership
- ☐ Replevin
- ☐ Stockholder Suit
- ☐ Other _____

Domestic Relations

- ☐ Child Custody/Visitation
- ☐ Child Support
- ☐ Contempt
- ☐ Divorce: Fault
- ☐ Divorce: Irreconcilable Differences
- ☐ Domestic Abuse
- ☐ Emancipation
- ☐ Modification
- ☐ Paternity
- ☐ Property Division
- ☐ Separate Maintenance
- ☐ Termination of Parental Rights
- ☐ UIFSA (formerly URESA)
- ☐ Other _____

Contract

- ☐ Breach of Contract
- ☐ Installment Contract
- ☐ Insurance
- ☐ Product Liability under Contract
- ☐ Specific Performance
- ☐ Other _____

Probate

- ☐ Accounting (Probate)
- ☐ Birth Certificate Correction
- ☐ Commitment
- ☐ Conservatorship
- ☐ Guardianship
- ☐ Heirship
- ☐ Intestate Estate
- ☐ Minor's Settlement
- ☐ Muniment of Title
- ☐ Name Change
- ☐ Power of Attorney
- ☐ Testate Estate
- ☐ Will Contest
- ☐ Other _____

Statutes/Rules

- ☐ Bond Validation
- ☐ Civil Forfeiture
- ☐ Declaratory Judgment
- ☐ ERISA
- ☐ Eminent Domain
- ☐ Extraordinary Writ
- ☐ Federal Statutes
- ☐ Injunction or Restraining Order
- ☐ Municipal Annexation
- ☐ Racketeering (RICO)
- ☐ Railroad
- ☐ Seaman
- ☐ Other _____

Appeals

- ☐ Administrative Agency
- ☐ County Court
- ☐ Hardship Petition (Driver License)
- ☐ Justice Court
- ☐ MS Employment Security Comm'n
- ☐ Municipal Court
- ☐ Oil & Gas Board
- ☐ Workers' Compensation
- ☐ Other _____

Children and Minors - Non-Domestic

- ☐ Adoption - Noncontested
- ☐ Consent to Abortion for Minor
- ☐ Removal of Minority

Torts-Personal Injury

- ☐ Bad Faith
- ☐ Fraud
- ☐ Loss of Consortium
- ☐ Malpractice - Legal
- ☐ Malpractice - Medical
- ☐ Negligence - General
- ☐ Negligence - Motor Vehicle
- ☐ Products Liability
- ☐ Wrongful Death
- ☒ Other Manufacturers Defect

Mass Tort

- ☐ Asbestos
- ☐ Chemical Spill
- ☐ Dioxin
- ☐ Hand/Arm Vibration
- ☐ Hearing Loss
- ☐ Radioactive Materials
- ☐ Other _____

Real Property

- ☐ Adverse Possession
- ☐ Ejectment
- ☐ Eminent Domain
- ☐ Judicial Foreclosure
- ☐ Lien Assertion
- ☐ Partition
- ☐ Receiver Appointment
- ☐ Tax Sale: Confirmation/Cancellation
- ☐ Title, Boundary &/or Easement
- ☐ Other _____

Civil Rights

- ☐ Elections
- ☐ Habeas Corpus
- ☐ Post Conviction Relief
- ☐ Prisoner
- ☐ Other _____

IN THE Circuit COURT OF Desoto COUNTY, MISSISSIPPI
Seventeenth JUDICIAL DISTRICT, CITY OF Hernando

Docket No. _____ File Yr. _____ Chronological No. _____ Clerk's Local ID _____

Docket No. If Filed
 Prior to 1/1/94 _____

PLAINTIFFS IN REFERENCED CAUSE - Page _____ of _____ Plaintiffs Pages
 IN ADDITION TO PLAINTIFF SHOWN ON CIVIL CASE FILING FORM COVER SHEET

Plaintiff # 1
 Individual: Scoggins David _____
Last Name First Name Maiden Name, If Applicable Middle Name Jr/Sr/III

____ Check (✓) if Individual Plaintiff is acting in capacity as Executor(trix) or Administrator(trix) of an Estate and Enter Style:

Estate of _____

____ Check (✓) if Individual Plaintiff is acting in capacity as Business Owner/Operator (D/B/A) or State Agency and enter that name below:

D/B/A _____

Business: _____
Enter legal name of business, corporation, partnership, agency - If Corporation, indicate state where incorporated

____ Check (✓) if Business Plaintiff is filing suit in the name of an entity other than the name above and enter below

D/B/A _____

ATTORNEY FOR THIS PLAINTIFF: 101120 Bar# or Name Nichon Shannon Pro Hac Vice ✓ _____ Not Attorney ✓ _____

Plaintiff # _____
 Individual: _____
Last Name First Name Maiden Name, If Applicable Middle Name Jr/Sr/III

____ Check (✓) if Individual Plaintiff is acting in capacity as Business Owner/Operator (D/B/A) or State Agency and enter that name below:

D/B/A _____

Business: _____
Enter legal name of business, corporation, partnership, agency - If Corporation, indicate state where incorporated

____ Check (✓) if Business Plaintiff is filing suit in the name of an entity other than the name above and enter below

D/B/A _____

ATTORNEY FOR THIS PLAINTIFF: _____ Bar# or Name _____ Pro Hac Vice ✓ _____ Not Attorney ✓ _____

Plaintiff # _____
 Individual: _____
Last Name First Name Maiden Name, If Applicable Middle Name Jr/Sr/III

____ Check (✓) if Individual Plaintiff is acting in capacity as Business Owner/Operator (D/B/A) or State Agency and enter that name below:

D/B/A _____

Business: _____
Enter legal name of business, corporation, partnership, agency - If Corporation, indicate state where incorporated

____ Check (✓) if Business Plaintiff is filing suit in the name of an entity other than the name above and enter below

D/B/A _____

ATTORNEY FOR THIS PLAINTIFF: _____ Bar# or Name _____ Pro Hac Vice ✓ _____ Not Attorney ✓ _____

IN THE circuit COURT OF Desoto COUNTY, MISSISSIPPI
seventeenth JUDICIAL DISTRICT, CITY OF Hernando

Docket No. _____
 File Yr _____ Chronological No. _____ Clerk's Local ID _____

Docket No. If Filed
 Prior to 1/1/94 _____

**DEFENDANTS IN REFERENCED CAUSE - Page ____ of ____ Defendants Pages
 IN ADDITION TO DEFENDANT SHOWN ON CIVIL CASE FILING FORM COVER SHEET**

Defendant # 1 :

Individual: unknown manufacturer of cautery machine
 Last Name First Name Maiden Name, if Applicable Middle Init. Jr/Sr/III/IV

____ Check (✓) if Individual Defendant is acting in capacity as Executor(trix) or Administrator(trix) of an Estate, and enter style:

Estate of _____

____ Check (✓) if Individual Defendant is acting in capacity as Business Owner/Operator (D/B/A) or State Agency, and enter that name below:

D/B/A _____

Business _____

Enter legal name of business, corporation, partnership, agency - If Corporation, indicate state where incorporated

____ Check (✓) if Business Defendant is being sued in the name of an entity other than the name above, and enter below:

D/B/A _____

ATTORNEY FOR THIS DEFENDANT: _____ Bar # or Name: _____ Pro Hac Vice (✓) _____ Not an Attorney(✓) _____

Defendant # ____ :

Individual: _____
 Last Name First Name Maiden Name, if Applicable Middle Init. Jr/Sr/III/IV

____ Check (✓) if Individual Defendant is acting in capacity as Executor(trix) or Administrator(trix) of an Estate, and enter style:

Estate of _____

____ Check (✓) if Individual Defendant is acting in capacity as Business Owner/Operator (D/B/A) or State Agency, and enter that name below:

D/B/A _____

Business _____

Enter legal name of business, corporation, partnership, agency - If Corporation, indicate state where incorporated

____ Check (✓) if Business Defendant is being sued in the name of an entity other than the name above, and enter below:

D/B/A _____

ATTORNEY FOR THIS DEFENDANT: _____ Bar # or Name: _____ Pro Hac Vice (✓) _____ Not an Attorney(✓) _____

Defendant # ____ :

Individual: _____
 Last Name First Name Maiden Name, if Applicable Middle Init. Jr/Sr/III/IV

____ Check (✓) if Individual Defendant is acting in capacity as Executor(trix) or Administrator(trix) of an Estate, and enter style:

Estate of _____

____ Check (✓) if Individual Defendant is acting in capacity as Business Owner/Operator (D/B/A) or State Agency, and enter that name below:

D/B/A _____

Business _____

Enter legal name of business, corporation, partnership, agency - If Corporation, indicate state where incorporated

____ Check (✓) if Business Defendant is being sued in the name of an entity other than the name above, and enter below:

D/B/A _____

ATTORNEY FOR THIS DEFENDANT: _____ Bar # or Name: _____ Pro Hac Vice (✓) _____ Not an Attorney(✓) _____

IN THE Circuit COURT OF Desoto COUNTY, MISSISSIPPI
seventeenth JUDICIAL DISTRICT, CITY OF Hernando

Docket No. _____ File Yr. _____ Chronological No. _____ Clerk's Local ID _____

Docket No. If Filed
 Prior to 1/1/94 _____

PLAINTIFFS IN REFERENCED CAUSE - Page ____ of ____ Plaintiffs Pages
 IN ADDITION TO PLAINTIFF SHOWN ON CIVIL CASE FILING FORM COVER SHEET

Plaintiff # 1:
 Individual: Scoggins David _____
Last Name First Name Maiden Name, if Applicable Middle Name Jr/Sr/III

____ Check (✓) if Individual Plaintiff is acting in capacity as Executor(trix) or Administrator(trix) of an Estate and Enter Style:

Estate of _____

____ Check (✓) if Individual Plaintiff is acting in capacity as Business Owner/Operator (D/B/A) or State Agency and enter that name below:

D/B/A _____

Business: _____

Enter legal name of business, corporation, partnership, agency - If Corporation, indicate state where incorporated

____ Check (✓) if Business Plaintiff is filing suit in the name of an entity other than the name above and enter below

D/B/A _____

ATTORNEY FOR THIS PLAINTIFF: 101120 Bar# or Name Nichon Shannon Pro Hac Vice ✓ _____ Not Attorney ✓ _____

Plaintiff # _____:

Individual: _____
Last Name First Name Maiden Name, if Applicable Middle Name Jr/Sr/III

____ Check (✓) if Individual Plaintiff is acting in capacity as Business Owner/Operator (D/B/A) or State Agency and enter that name below:

D/B/A _____

Business: _____

Enter legal name of business, corporation, partnership, agency - If Corporation, indicate state where incorporated

____ Check (✓) if Business Plaintiff is filing suit in the name of an entity other than the name above and enter below

D/B/A _____

ATTORNEY FOR THIS PLAINTIFF: _____ Bar# or Name _____ Pro Hac Vice ✓ _____ Not Attorney ✓ _____

Plaintiff # _____:

Individual: _____
Last Name First Name Maiden Name, if Applicable Middle Name Jr/Sr/III

____ Check (✓) if Individual Plaintiff is acting in capacity as Business Owner/Operator (D/B/A) or State Agency and enter that name below:

D/B/A _____

Business: _____

Enter legal name of business, corporation, partnership, agency - If Corporation, indicate state where incorporated

____ Check (✓) if Business Plaintiff is filing suit in the name of an entity other than the name above and enter below

D/B/A _____

ATTORNEY FOR THIS PLAINTIFF: _____ Bar# or Name _____ Pro Hac Vice ✓ _____ Not Attorney ✓ _____

IN THE circuit COURT OF Desoto COUNTY, MISSISSIPPI
seventeenth JUDICIAL DISTRICT, CITY OF Hernando

Docket No. _____
 File Yr _____ Chronological No. _____ Clerk's Local ID _____

Docket No. If Filed
 Prior to 1/1/94 _____

**DEFENDANTS IN REFERENCED CAUSE - Page ___ of ___ Defendants Pages
 IN ADDITION TO DEFENDANT SHOWN ON CIVIL CASE FILING FORM COVER SHEET**

Defendant # 1 :

Individual: unknown manufacturer of cautery machine
 Last Name First Name Maiden Name, if Applicable Middle Init. Jr/Sr/III/IV

___ Check (✓) if Individual Defendant is acting in capacity as Executor(trix) or Administrator(trix) of an Estate, and enter style:

Estate of _____

___ Check (✓) if Individual Defendant is acting in capacity as Business Owner/Operator (D/B/A) or State Agency, and enter that name below:

D/B/A _____

Business _____

Enter legal name of business, corporation, partnership, agency - If Corporation, indicate state where incorporated

___ Check (✓) if Business Defendant is being sued in the name of an entity other than the name above, and enter below:

D/B/A _____

ATTORNEY FOR THIS DEFENDANT: _____ Bar # or Name: _____ Pro Hac Vice (✓) ___ Not an Attorney(✓) ___

Defendant # ___ :

Individual: _____
 Last Name First Name Maiden Name, if Applicable Middle Init. Jr/Sr/III/IV

___ Check (✓) if Individual Defendant is acting in capacity as Executor(trix) or Administrator(trix) of an Estate, and enter style:

Estate of _____

___ Check (✓) if Individual Defendant is acting in capacity as Business Owner/Operator (D/B/A) or State Agency, and enter that name below:

D/B/A _____

Business _____

Enter legal name of business, corporation, partnership, agency - If Corporation, indicate state where incorporated

___ Check (✓) if Business Defendant is being sued in the name of an entity other than the name above, and enter below:

D/B/A _____

ATTORNEY FOR THIS DEFENDANT: _____ Bar # or Name: _____ Pro Hac Vice (✓) ___ Not an Attorney(✓) ___

Defendant # ___ :

Individual: _____
 Last Name First Name Maiden Name, if Applicable Middle Init. Jr/Sr/III/IV

___ Check (✓) if Individual Defendant is acting in capacity as Executor(trix) or Administrator(trix) of an Estate, and enter style:

Estate of _____

___ Check (✓) if Individual Defendant is acting in capacity as Business Owner/Operator (D/B/A) or State Agency, and enter that name below:

D/B/A _____

Business _____

Enter legal name of business, corporation, partnership, agency - If Corporation, indicate state where incorporated

___ Check (✓) if Business Defendant is being sued in the name of an entity other than the name above, and enter below:

D/B/A _____

ATTORNEY FOR THIS DEFENDANT: _____ Bar # or Name: _____ Pro Hac Vice (✓) ___ Not an Attorney(✓) ___

JMB
JOHN MICHAEL BAILEY
ATTORNEY AT LAW

June 21, 2007

Clerk of Court
Circuit Court of DeSoto County, MS.
2535 Hwy. 51 South
Hernando, MS 38632

RE: David Scoggins vs. Unknown Manufacturer of Cautery Machine
Circuit Court Docket No. CV2007-0148CD

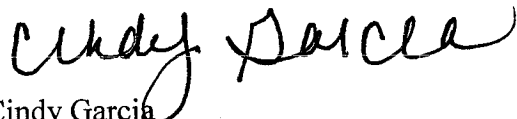
Dear Sir/Madam:

Please find enclosed herewith the civil cover sheet I had inadvertently left out in the above referenced matter.

If you have any questions please call me directly at (901) 507-3707.

Sincerely,

Law Offices of
John Michael Bailey, P.C.



Cindy Garcia
Litigation Assistant

Enclosure

FILED

JUL 03 2007

DALE K. THOMPSON, CIRCUIT CLERK
DESOTO COUNTY, MISSISSIPPI
MINUTE BOOK _____ PAGE _____

**IN THE CIRCUIT COURT OF DESOTO COUNTY, MISSISSIPPI
FOR THE SEVENTEENTH JUDICIAL DISTRICT AT HERNANDO**

DAVID SCOGGINS,

Plaintiff,

**NO. CV2007-0148 CD
JURY DEMANDED**

vs.

MICROVASIVE,

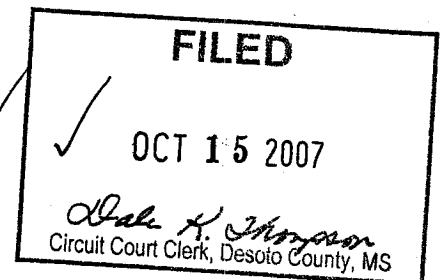
Defendant,

**MOTION OF THE PLAINTIFF DAVID SCOGGINS, FOR LEAVE
TO AMEND COMPLAINT**

COMES NOW, the Plaintiff, DAVID SCOGGINS, by and through his attorney of record would show unto this Honorable Court as follows to wit:

1. The Plaintiff, David Scoggins, filed a Complaint against the Defendant, a Unknown Manufacturer of Cautery Machine, on or about June 21, 2007, claiming damages for injuries he sustained when, as a patient undergoing a routine Colonoscopy at Baptist Memorial Hospital DeSoto, the cauterizing machine malfunctioned, tearing a hole in the colon and abdominal wall of the Plaintiff, known as an intestinal perforation, causing extreme pain as well as grievous and permanent injury.

2. While filing the complaint, the Plaintiff was unaware of the name and address of the Manufacturer of said Cautery machine and the exact name of the machine or device used for the procedure. Hence, the unknown Defendant was named in the complaint as "Unknown manufacturer of Cautery machine".



3. While filing the complaint, the Plaintiff took out a Subpoena Duces Tecum to Baptist Memorial Hospital, DeSoto, under whose care and custody, the Plaintiff sustained injury, requesting them to furnish particulars about the name and address of the manufacturer, the device manufactured by them which was used for the procedure and other relevant information. The Baptist Memorial Hospital, DeSoto filed its response to the Subpoena on July 12, 2007, disclosing the name of the unknown manufacturer as "Microvasive", addressed at Boston Scientific Corporation, 480 Pleasant Street, Watertown, PA 02172 and the name of the device manufactured by Microvasive which was used for Plaintiff's procedure as "Endostat II Bipolar/Monopolar Electrosurgical Generator, Device Number D2067."

4. The amendment as sought, is just and necessary, as complete relief cannot be accorded among those already named party. No prejudice will be caused to the Defendant if this motion is granted.

5. That the Plaintiff desires to amend his complaint to correct the name of the Defendant, Unknown manufacturer of Cautery Machine, as "Microvasive", furnish its correct address as well as correct name of the device used for Plaintiff's procedure, pursuant to M.R.C.P. Rule 15.(a) and 15.(c) and Rule 19.

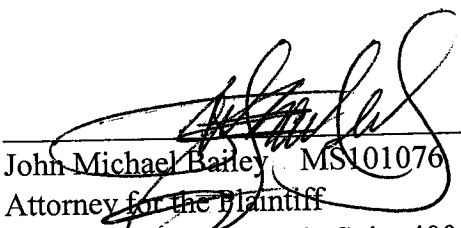
WHEREFORE PREMISES CONSIDERED, the Plaintiff respectfully prays:

1. That this Honorable Court grant leave of this motion so the Plaintiff can amend her Complaint, attached hereto as **EXHIBIT A**.

2. For such other further relief to which the Plaintiff may be entitled.

Respectfully Submitted,

**Law Offices of
John Michael Bailey, P.C.**



John Michael Bailey MS101076
Attorney for the Plaintiff
5978 Knight Arnold Rd., Suite 400
Memphis, TN. 38115
901-529-1010
901-529-1017 Fax

CERTIFICATE OF SERVICE

I, John Michael Bailey, do hereby certify that I have served a true and correct copy of the foregoing to all interested parties by either hand delivery or by the placing of the same in the United States Mail, postage prepaid on this 18th day of Sept, 2007



John Michael Bailey

IN THE CIRCUIT COURT OF DESOTO COUNTY, MISSISSIPPI
FOR THE SEVENTEENTH JUDICIAL DISTRICT AT HERNANDO

DAVID SCOGGINS,

Plaintiff,

NO. CN2007-0148CD
JURY DEMANDED

vs.

UNKNOWN MANUFACTURER OF CAUTERY MACHINE,

Defendant,

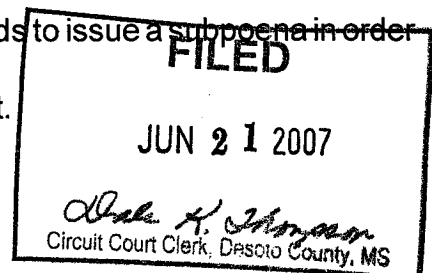
COMPLAINT

COMES NOW the Plaintiff, DAVID SCOGGINS by and through the undersigned attorneys and hereby files this complaint against the Defendant, UNKNOWN MANUFACTURER OF CAUTERY MACHINE, making the following allegations, to wit:

PARTIES

1. That the Plaintiff an adult resident of Memphis, Shelby County, Tennessee.
2. That the Defendant, Unknown Manufacturer of Cautery Machine, is a for-profit manufacturing entity providing medical equipment, to include Cautery machines, to the Baptist Memorial Hospital-DeSoto, and is either a sole proprietorship, a partnership, or a domestic corporation duly incorporated under the laws of this state or a foreign corporation and is authorized to do business within this state. Plaintiff requires additional information to effect service of process as the identity of the Defendant as well as any agent for the service of process is unknown to the Plaintiff as this time. Plaintiff intends to issue a subpoena in order to obtain the information necessary to serve this Complaint.

EXHIBIT A



3. That the Plaintiff's cause of action arises in tort as a result of injuries he sustained when, as a patient undergoing a routine Colonoscopy at Baptist Memorial Hospital-DeSoto, the cauterizing machine malfunctioned, tearing a hole in the colon and abdominal wall of the Plaintiff, known as an intestinal perforation, causing extreme pain as well as grievous and permanent injury.

FACTS

4. That on or about June 22, 2004, Plaintiff, David Scoggins, checked in to Baptist Memorial Hospital DeSoto for a scheduled medical procedure known as a Colonoscopy to have polyps removed from the surface of the colon.

5. That Plaintiff, David Scoggins, was prepared for surgery, and in the course of this preparation, he was placed on surgical table and was rendered unconscious by general anesthesia.

6. During the procedure, the attending surgeon was using a cauterizing machine to "burn" polyps from the surface of the Plaintiff's colon.

7. The attending surgeon, according to written medical narratives, asked the nurse to adjust this machine, at which time, the machine created a jolt of electricity, comparable to a lightning strike, into the colon of Mr. Scoggins.

8. The electric shock burned a hole into Mr. Scoggins colon, causing him to suffer a respiratory arrest and failure, erratic heart rates and an extended stay under intensive care on a ventilator for breathing support, and a feeding tube inserted into his stomach.

9. The Plaintiff was required, as part of efforts to save his life, to undergo an additional surgical procedure to repair the perforated colon, leaving the Plaintiff with a scar

from his chest to his waist.

10. The Plaintiff has also been left with a cognitive deficit, including memory loss, from which he may never fully recover.

11. That Plaintiff, David Scoggins, was a patient under the care of Baptist Memorial Hospital-DeSoto.

12. That Plaintiff entrusted his health, well being, and his very life, to Baptist Memorial Hospital-DeSoto.

13. The unknown manufacturer was under a duty to take every precaution to ensure that cautery machines being sold/supplied by it are properly designed, manufactured, constructed, assembled, inspected and safe for the intended use.

14. That Plaintiff was in a state of unconsciousness and not in a position to determine the safety of the surgical equipment to be used upon him. That Plaintiff nor any reasonable person not educated in the field of medicine or medical equipment could have known, by sight alone, that the cautery machine had an electrical malfunction.

15. That the negligence of Defendant, Unknown Manufacturer of Cautery Machine is the proximate cause of the injuries and damages sustained by the Plaintiff in this action, which shall be set forth hereinafter with more particularity.

NEGLIGENCE

16. The Plaintiff hereby realleges the previous paragraphs and incorporates them by reference.

17. The Defendant, Unknown Manufacturer, participated in the manufacture, sale, and maintenance of the cautery machine.

18. At all times mentioned in this Complaint, Defendant so negligently and carelessly designed, manufactured, constructed, assembled, inspected, and sold the Cautery Machine to the Baptist Memorial Hospital-DeSoto, even though it was dangerous and unsafe for its intended uses.

19. This design defect made the product unreasonably dangerous.

20. Further, Defendant negligently maintained the said cautery machine, or negligently trained other personnel of Baptist Memorial Hospital-DeSoto, in the maintenance and care of the said cautery machine.

21. The cautery machine as manufactured and assembled by Defendant remained unchanged and was in the same condition at the time of the injury hereafter alleged.

22. Defendant knew or should have known when manufacturing and maintaining this electrical system that it was designed defectively or maintained, creating a unreasonable risk of injury for to Plaintiff.

23. That the negligence of Defendant, Unknown Manufacturer of Cautery Machine, is the proximate cause of the Plaintiff's injuries.

INJURIES AND DAMAGE

24. The Plaintiff hereby realleges the previous paragraphs and incorporates them by reference.

25. Plaintiff charges and alleges that as a direct and proximate result of the use of defendant's defective product, he suffered severe and permanent personal injuries, including but not limited to:

Great physical pain, past and future

Great mental and emotional suffering

Fear for his life

Loss of enjoyment of life, past and future

Loss of earnings, past and future

Fear and anxiety regarding future surgery/medical treatments

Doctor and medical bills

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays:

1. That proper process issue against this Defendant and that Defendant be required to answer this Complaint.
2. That Plaintiff, David Scoggins, be awarded a judgment against the Defendant, in an amount not to exceed **\$2,000,000.00 (TWO MILLION DOLLARS)**, in actual, compensatory and punitive damages.
3. That the cost of this action be awarded to the Plaintiff.
4. That Plaintiff demands a Jury to try these issues when joined.
5. Plaintiff reserves the right to amend these pleadings to conform to the facts of this matter.

Respectfully Submitted,

**Law Offices of
John Michael Bailey, P.C.**

A handwritten signature in cursive script, reading "Nichon Shannon", is written over a horizontal line.

Nichon Shannon MS101120
John Michael Bailey MS101076
Attorneys for Plaintiff
5978 Knight Arnold Road, Ste. 400
Memphis, Tennessee 38115
(901) 529-1010
(901) 529-1017 Fax

**IN THE CIRCUIT COURT OF DESOTO COUNTY, MISSISSIPPI
FOR THE SEVENTEENTH JUDICIAL DISTRICT AT HERNANDO**

DAVID SCOGGINS,

Plaintiff,

NO. CV2007-0148 CD

JURY DEMANDED

vs.

MICROVASIVE,

Defendant,

**MOTION FOR EXTENSION OF TIME
FOR EFFECTIVE SERVICE ON DEFENDANT**

COMES NOW, the Plaintiff, David Scoggins, by and through counsel of record, John Michael Bailey, and files this motion for extension of time within which to obtain effective service upon Defendant, states as follows:

1. The Plaintiff, David Scoggins, filed a Complaint against the Defendant, Unknown Manufacturer of Cautery Machine on or about June 21, 2007.
2. On or about June 21, 2007 a summons was not issued to said Unknown Defendant due to lack of information as to the correct name and address of said manufacturer of Cautery Machine..
3. Plaintiff respectfully requests that he be given an additional 120 days to properly obtain effective service within that time.

FILED

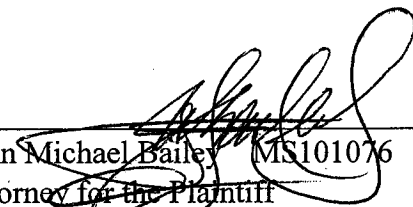
OCT 15 2007

Wale H. Thompson
Circuit Court Clerk, Desoto County, MS

WHEREFORE, the Plaintiff, prays that said Motion for Extension of Time for Effective Service be granted allowing Plaintiff to obtain service upon the Defendant within 120 days.

Respectfully submitted,

**Law Offices of
John Michael Bailey, P.C.**



John Michael Bailey MS101076
Attorney for the Plaintiff
5978 Knight Arnold Rd., Suite 400
Memphis, TN. 38115
(901) 529-1010
(901) 529-1017 Fax

CERTIFICATE OF SERVICE

I, John Michael Bailey, do hereby certify that I have served a true and correct copy of the foregoing to all interested parties by either hand delivery or by the placing of the same in the United States Mail, postage prepaid on this 18th day of September, 2007



John Michael Bailey

JMB
JOHN MICHAEL BAILEY
ATTORNEY AT LAW

September 19, 2007

VIA PRIORITY MAIL:

Clerk of Court
Circuit Court of DeSoto County, MS
2535 Hwy. 51 South
Hernando, MS 38632

RE: David Scoggins vs. Microvasive
Circuit Court Docket No. CV2007-0148CD

Dear Sir/Madam:

Please find enclosed for filing herewith an original and three copies of the following:

1. Amended Complaint.
2. Motion for the Plaintiff David Scoggins, For Leave to Amend Complaint.
3. Motion for Extension of Time for Effective Service on Defendant.
4. Civil summons.

I have also enclosed an original and two copies of a civil summons to be issued and returned to me so that I may have a Private Process Server serve a copy of the Complaint upon Defendant, Microvasive.

Please return filed stamp copies in the self addressed envelope I have enclosed for your convenience.

If you have any questions please call me directly at (901) 507-3707. Thank you for time and attention to this matter.

Sincerely,

Law Offices of
John Michael Bailey, P.C.



Cindy Garcia
Litigation Assistant

FILED

OCT 15 2007

Enclosures


CIRCUIT COURT CLERK, DESOTO COUNTY MISS